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April 23, 2015

VIA ELECTRONIC FILING

The Honorable Rudolph T. Randa
362 United States Courthouse, Room 310
517 East Wisconsin Avenue
Milwaukee, WI 53202

Re: *Herr, et al. v. Linde LLC, et al.*
Eastern District of Wisconsin Case No. 2:10-cv-01114-RTR

Dear Judge Randa:

On behalf of my client, Defendant Linde LLC, improperly named in the complaint as Linde, Inc., formerly known as Airco, Inc. (“Airco”), I submit this brief letter response to Plaintiff’s Request for Ruling on her Objection to Dispositive Motion and Motion to Strike and Motion for Leave to Respond to Defendant’s Motion for Summary Judgment if Plaintiff’s Motion to Strike is Denied. (Doc. 32.)

As noted in Airco’s prior filings, the Opposition to the Motion to Strike and its Reply Brief in Support of Its Motion for Summary Judgment (Doc. Nos. 30 and 31), the Court should deny Plaintiff’s Motion to Strike. It should also deny the Plaintiff’s Motion for Leave to file a Response.

First, there is no basis for the Plaintiff’s Motion to Strike as Airco was given leave to file its summary judgment motion at the February 25, 2015 status conference and this Court issued an order setting a deadline for that motion of March 25, 2015. (*See generally* Airco’s Opposition to Motion to Strike at pp. 4-6.) Pursuant to this order, Airco timely filed its summary judgment motion and supporting documents. (Doc. Nos. 22, 23, 24, 25 and 26.)

Second, based on the record before this Court, Airco is entitled to summary judgment as a matter of law and this Court should rule accordingly. Plaintiff admits in her subsequent filings that she did not oppose the Proposed Findings of Fact as submitted by Airco or address any of its arguments. Plaintiff had 30 days pursuant to local rules to file a response to Airco’s summary judgment motion. Local Civ. R. 56. She has not yet done so. The local rules permit this Court to

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deem admitted Airco's proposed findings of fact because they stand unrefuted. *Id.* (Doc. 30 and 31.)

Moreover, in the Motion to Enlarge time, Plaintiff has not submitted a valid justification to enlarge the time to file a response – all of her counsel's scheduling conflicts take place *after* April 20, 2015. Plaintiff could have filed a response brief along with her Motion to Strike on April 1, 2015 and avoided these potential conflicts – she chose not to do so. As such, Airco objects to granting Plaintiff any additional time to file a response brief.

Alternatively, if the Court permits the Plaintiff to file a response to Airco's motion, it respectfully requests permission to reply to any arguments raised by the Plaintiff within the time allotted under the local rules after service of same.

Thank you for your consideration.

Very truly yours,



Sarah E. Thomas Pagels

SET/hjl

cc: Robert G. McCoy, Esq. (*via electronic filing*)